

WEST BOUNTIFUL CITY

ORDINANCE #343-12

AN ORDINANCE AMENDING SECTIONS 17.08.120 APPEAL FROM DECISION OF LAND USE AUTHORITY, 17.08.130 VARIANCES, 17.12.030 RULES FOR LOCATING BOUNDARIES, AND RESCINDING IN ITS ENTIRETY CHAPTER 2.40 BOARD OF ADJUSTMENT.

WHEREAS, the West Bountiful City Council recognizes the importance of establishing an appropriate procedure for land use appeals and variances; and

WHEREAS, the proposed changes designate authority and exclusive procedure, clarifying the responsibilities of the appeal process; and

WHEREAS, the changes are consistent with Appeal and Variance language throughout the entire West Bountiful Municipal Code; and

WHEREAS, the Board of Adjustment is non-functioning and is being deleted;

NOW, THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF WEST BOUNTIFUL CITY, UTAH, THAT TITLE 17 BE AMENDED AS INDICATED IN ATTACHED EXHIBIT A AND CHAPTER 2.40 BE DELETED IN ITS ENTIRETY.

This ordinance will become effective upon signing and posting.

Adopted this 15th day of May, 2012.

By: _____

Ken Romney, Mayor

Attest: _____

Heidi Voordeckers, City Recorder



Voting by the City Council:	Aye	Nay
Councilmember Ahlstrom	<u>X</u>	_____
Councilmember Preece	<u>X</u>	_____
Councilmember Bruhn	<u>X</u>	_____
Councilmember McKean	<u>X</u>	_____
Councilmember Tovey	<u>X</u>	_____

17.08.120 Appeal from decision of land use authority.

- A. Exclusive Procedure. Notwithstanding any provision of the Municipal Code to the contrary, any appeal from the decision of a land use authority administering or interpreting a land use ordinance or from a fee charged under this title in accordance with Utah Code Ann. § 10-9a-510, as amended, may be made only in accordance with the provisions of this section and any applicable section in Title 16. Any appeal from the decision of a land use authority administering or interpreting the city's geologic hazards ordinance may be made only in accordance with the provisions of this section, subject to applicable provisions of State law, including Utah Code Ann. § 10-9a-703(2), as amended. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to the appeal authority.
- B. Appeal Authority. The City Council will serve as appeal authority for purposes of any appeal from a decision of the zoning administrator, planning commission, or other land use authority under this title. The appeal authority will respect the due process rights of each of the participants in the appeal proceedings. If the City Council has acted as the land use authority regarding the subject matter of the appeal, there shall be no appeal authority and any appeal shall be made to district court in the manner provided by law.
- C. Time of Appeal. The city, a board or officer of the city, or any person adversely affected by a land use authority's decision administering or interpreting a land use ordinance may file a written notice of appeal with the city recorder within ten (10) days after the land use authority's decision is issued. All appeal rights are waived if the notice of appeal is not filed within that time frame.
- D. Notice of Appeal—Contents. The notice of appeal shall contain a brief statement of all alleged grounds for appeal, including every theory of relief the adversely affected party can raise in district court, together with any supporting documentation and legal argument. The appellant waives any ground, theory, or argument not raised in the notice of appeal. Unless the appeal authority orders otherwise for good cause, the appellant will be precluded from presenting as evidence at the appeal hearing any document or other information that is not included in the notice of appeal.
- E. Response to Notice of Appeal. At its option, the city or any party opposing the appeal may file a written brief, together with any supporting documentation, responding to the notice of appeal prior to the appeal hearing. Failure to file a responsive brief or submit supporting documentation will not preclude the party from responding to the notice of appeal at the appeal hearing.
- F. Burden of Proof. The appellant bears the burden of proving that the land use authority erred.
- G. Standard of Review. The appeal authority shall determine the correctness of the land use authority's decision interpreting or applying a land use ordinance. The appeal authority shall

review de novo the evidence and arguments on appeal, without deference to any findings or conclusions of the land use authority.

- H. Hearing on Appeal. The appeal authority will hear the appeal at a regular City Council meeting, scheduled at the convenience of the council. The city will provide notice of the hearing to the appellant and any party that has filed a responsive brief. At the hearing, each party will be allowed a reasonable time, as determined by the appeal authority, to present evidence, by way of live testimony and documentary evidence (including affidavits), and arguments supporting the party's position. In the interest of fairness, the appeal authority, in its discretion, may continue the hearing to another City Council meeting or allow the parties to submit supplemental materials addressing any information raised at the hearing.
- I. Final Decision. Following the hearing the appeal authority may affirm, reverse, affirm in part and reverse in part, or modify the decision of the land use authority; or the appeal authority may remand the matter to the land use authority for further proceedings. The written decision of the appeal authority constitutes a final decision and will be binding on all parties when issued.
- J. Further Appeal. The city, a board or officer of the city, or any person adversely affected by the decision of the appeal authority may appeal to district court as provided by law.

17.08.130 Variances.

- A. Any person or entity desiring a waiver or modification of the requirements of this title as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the City Council, acting as the appeal authority, for a variance from the terms of the ordinance.
- B. The City Council may grant a variance only if:
 - 1. Literal enforcement of the provisions of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the city's land use ordinances;
 - 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;
 - 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;
 - 4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - 5. The spirit of the land use ordinance is observed and substantial justice is done.
- C. In determining whether or not enforcement of the provisions of this title would cause unreasonable hardship under Subsection B(1), the City Council may not find an unreasonable hardship unless the alleged hardship:

1. Is located on or associated with the property for which the variance is sought; and
 2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- D. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection B(1), the City Council may not find an unreasonable hardship if the hardship is self-imposed or economic.
- E. In determining whether or not there are special circumstances attached to the property under Subsection B(2), the City Council may find that special circumstances exist only if the special circumstances:
1. Relate to the hardship complained of; and
 2. Deprive the property of privileges granted to other properties in the same zone.
- F. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- G. Variances run with the land.
- H. The City Council may not grant a use variance.
- I. In granting a variance, the City Council may impose additional requirements on the applicant that will:
1. Mitigate any harmful effects of the variance; or
 2. Serve the purpose of the standard or requirement that is waived or modified.
- J. The City Council shall issue a written decision, including findings, with respect to the request for variance. The written decision will be final when issued, and may thereafter be appealed to district court in accordance with applicable law.

17.12.030 Rules for locating boundaries.

- E. When a zoning district boundary cuts through a lot existing at the time of adoption of this zoning code, the use regulations governing the portion of the lot located within the more restrictive zone shall govern the use and development of the entire lot, unless a variance has been granted by the appeal authority in accordance with the limitations of Chapter 16.24., and except for legally existing non-conforming uses and buildings on the lot.

Chapter 2.40 BOARD OF ADJUSTMENT – RESCINDED per Ordinance 343-12, May 15, 2012

Sections:

2.40.010 Membership--Terms of office--Appointment--Compensation.

2.40.020 Operation--Appeals--Conditional use permits.

2.40.010 Membership--Terms of office--Appointment--Compensation.

- A. There shall be a board of adjustment consisting of five members and whatever number of alternates the city council shall authorize.
- B. Members and alternate members of the board of adjustment shall be appointed to five-year terms of office, except that members and alternate members may be appointed to shorter terms of office when necessary to ensure that the term of only one member and one alternate member expires each year.
- C. Members and alternate members of the board of adjustment shall be appointed by the mayor, with the advice and consent of the city council.
- D. Members and alternate members of the board of adjustment shall serve without compensation, but the city council may authorize their reimbursement for expenses actually incurred in the performance of their duties. (Prior code § 9-3-1)

2.40.020 Operation--Appeals--Conditional use permits.

- A. The board of adjustment shall organize, operate and have all of the powers, duties and limitations described in state law for a board of adjustment.
- B. Appeals to the board of adjustment, and from the board of adjustment to the district court, shall be taken in the time and manner provided in state law.
- C. Appeals from a decision of the planning commission regarding conditional use permits shall be heard and decided by the city council. While so acting, the city council shall be acting in an administrative capacity and rules described in state law for an appeal to a board of adjustment, and from a board of adjustment to the district court, shall apply to the city council. (Prior code § 9-3-2)